

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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STANLEY JOSEPH, :  
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 :  
 : Petitioner, : 04 Civ. 10012 (DLC)  
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 :  
 : -v- : MEMORANDUM OPINION  
 : AND ORDER  
 :  
 : FREDERICK MENIFEE, Warden, FCI :  
 : Otisville, :  
 :  
 : Respondent. :  
 :  
 :  
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DENISE COTE, District Judge:

Pro se petitioner Stanley Joseph ("Joseph"), a federal prisoner sentenced by this Court on March 18, 2004 to a prison term of 27 months, has brought this petition pursuant to 28 U.S.C. § 2241 to challenge the policy of the Bureau of Prisons ("BOP"), in existence since December 2002, not to consider prisoners for designation to a community corrections center ("CCC") until the last ten percent of their prison terms. Prior to December 2002, the BOP considered an inmate eligible for six months of community confinement even if six months constituted more than ten percent of his term of imprisonment. Sanders v. Meniffee, No. 04 Civ. 1483 (DLC), 2004 WL 1562734, at \*1 (S.D.N.Y. July 13, 2004). New BOP regulations replaced the December 2002 rules on February 14, 2005. See 28 C.F.R. §§ 570.20 - 21. This matter was referred to Magistrate Judge Douglas F. Eaton for a Report and Recommendation ("Report") on March 17, 2005. Although Joseph's petition initially challenged the December 2002 rules,

after this matter was referred, Joseph supplemented his petition in order to challenge the February 2005 policy. On July 26, 2005, Magistrate Judge Eaton issued a Report, to which Joseph has objected, recommending that the petition be denied for the reasons expressed in the Honorable Gerard E. Lynch's opinion in Troy v. Apker, No. 05 Civ. 1306 (GEL), 2005 WL 1661101 (S.D.N.Y. June 30, 2005).

The court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). The court shall make a de novo determination of the portions of the report to which petitioner objects. United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997). "A district court may adopt those portions of the Report to which no objections have been made and which are not facially erroneous." Wilds v. United Parcel Serv., Inc., 262 F. Supp. 2d 163, 170 (S.D.N.Y. 2003) (citation omitted).

Joseph makes two objections to the Report. First, he argues that some district judges have ruled that the February 2005 rules are invalid, which shows that "reasonable jurists would find the issues at least debatable." Joseph's second objection restates his argument that the BOP exceeded its authority under 18 U.S.C. § 3621(b), and contends that this "key issue" was "not fully discussed in Judge Lynch's decision."

Having reviewed Troy and finding that it contains a

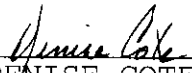
persuasive analysis of the legal challenges to the February 2005 policy, Joseph's objections to the Report are rejected.

Accordingly, it is hereby

ORDERED that the Report is adopted and the petition is denied. The Clerk of Court shall dismiss this petition. Because reasonable jurists have resolved this issue differently, see Troy, 2005 WL 1661101, at \*1 (collecting cases), Joseph is granted a Certificate of Appealability. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

SO ORDERED:

Dated: New York, New York  
August 9, 2005

  
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DENISE COTE  
United States District Judge